

IN THE CHANCERY COURT FOR LEWIS COUNTY  
AT HOHENWALD, TENNESSEE

FILED  
AT 3:22 O'CLOCK P.M.

MAR 14 2005

In re:

SENTINEL TRUST COMPANY

) JANET WILLIAMS, CLERK & MASTER  
) BY Selina Wix  
) No. 4781  
)  
)

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Expanded Objections of Danny N. Bates, et al.,  
to all Pending Motions of Receiver  
Reset for June 9, 2005

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The objecting parties, Dannie N. Bates, et al., and Sentinel Trust Company by its Board of Directors, (hereinafter, "Objecting Parties," being the same parties who objected on or about February 25, 2005 to certain motions of the Receiver) incorporate those objections by reference herein and make the following objections to all motions of the said Receiver still pending:

1<sup>st</sup>: Objecting parties previously presented to the Court their substantial and specific objections, by appearances and statements by counsel in open Court on June 30, 2004 and July 12, 2004, as per hearing transcripts filed, by filing in the Court on June 30, 2004, as an exhibit, a copy of the petition for *Certiorari* filed in the Davidson County Chancery Court, and by filing other specific objections to transfer of fiduciary positions to alleged successor trustees on or about November 12, 2004. The issues so raised include:

- (a) Said parties' insistence that the Commissioner is wholly without power to take the actions he has taken in seizing and proceeding to destroy Sentinel Trust Company, and his charges that Sentinel had become insolvent are and were false and fictitious. The basis of these positions is spelled out most succinctly in a complaint some of the said parties filed in the U. S. District Court for the Middle District of Tennessee (since dismissed *without prejudice* in deference to the decisional authority of Tennessee state courts), a copy of which is a part of their objections filed November

12, 2004..

- (b) As detailed in such earlier filings, some of the Commissioner's most egregious incorrect assumptions that are the basis of his claim of powers to act so destructively are that

(i) Statutory powers given him to be exercised specifically over only **state banks** are assumed by him without valid rationale to empower him to exercise the same powers over state trust companies, which are not banks and which lack the characteristics of a bank and the hazards inherent in the operation of every bank;

(ii) He erroneously viewed assets of Sentinel in its fiduciary capacity as being liabilities of Sentinel, when they are instead liabilities of various defaulted bond issuers in amounts reasonably believed to be more than covered by assets undergoing liquidation procedures;

(iii) In claiming to so conclude the Commissioner disregarded the fact that the liabilities were owed by such bond issuers to Sentinel in its fiduciary capacity (e.g., equitably, subject to collection, the property of non-defaulting bond issuers whose money constituted the pooled account, after the payment of liabilities to their bond-holders) totaled more than double the amounts actually "borrowed" because such overdraft-created debts generated an additional charge of 1½% per month, compounded monthly;

(iv) In so assuming insolvency, the Commissioner erroneously disregarded the fact that he is given no lawful power to adjudge whether Sentinel had breached its trust powers, because such jurisdiction is vested exclusively in the Chancery Courts under T.C.A. § 35-3-117(j)(1)-(3), which limits the liability of a trust company (or bank) for breach of fiduciary obligations to the total of underpayments to trust beneficiaries, and during Sentinel's management of its business, it never caused any underpayment to any beneficiary (being bond-holders under bond-indenture trusts of which Sentinel was trustee).

In sum, all the Commissioner's activities evinced either a deliberate intent to unjustifiably destroy Sentinel, or else total disregard of the nature of trust company business as distinguished from the banking business, *e.g.*, the failure to exhibit the degree of professional competence demanded to exercise properly the powers vested in him. By such actions, he is seeking to obtain the shield of the appearance of an adjudication of illegality to cover acts which, if he is empowered to commit them at all, is empowered by statutes to do so on his own authority and at his own peril.

The foregoing issues described above are awaiting briefing, argument and decision before the Tennessee Court of Appeals upon appeal from certain orders entered by this Court as final judgments, and are still awaiting trial before the Davidson County Chancery Court, with the result that it is presumably within this Court's discretionary power to withhold ruling by retaining all motions under advisement pending appellate court action.

2<sup>nd</sup>: The basis of the Commissioner's claim of power is that Sentinel Trust Company, as a fiduciary, has become insolvent, and he has throughout claimed the power to use trust funds from Sentinel's pooled trust funds account—being the property of trust settlors (bond issuers) or the property of trust beneficiaries (bond holders)—to run his receivership operations. Such use is wholly illegal and without authority because both Federal (in regard to bankruptcy trusteeships) and State (in regard to insolvency receiverships) authorities hold that such trust funds, not being the property of the insolvent fiduciary holding them, are immune from ownership or right of control by an insolvent fiduciary's receiver or trustee in bankruptcy, *Caplin, Trustee, v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S.Ct. 1678, 32 L.Ed.2d 195 (1972), and *Wagner, Trustee v. Citizens' Bank & Trust Co.*, 122 Tenn. 164, 122 S.W. 245 (1909).

3<sup>rd</sup>: Most respectfully, this Court is without jurisdiction to enter the orders sought, hence should refrain from issuing any such orders, upon the rationale set out below:

(a) General Tennessee law has established, through judicial decisions, that when a court is empowered by statute to grant only specific and limited relief under stated conditions, it is without jurisdiction to enter orders granting relief in excess of that authorized by statute, so that such orders are void for lack of jurisdiction, even when in the form of a consent final judgment. *City of Bluff City v. Morrell*, 764 S.W.2d 200 (Tenn., 1988); *Brown v. Brown*, 198 Tenn. 600; 281 S.W.2d 492 (1955)

(b) This Court's statutory powers are quite limited, if, as the Commissioner insists, the word "bank" in statutes authorizing him to seize and liquidate "state banks" also authorizes him to seize state trust companies, which are not banks either by statutory definition or otherwise. The specific powers that would be vested in this Court upon seizure of a **state bank** by the statutes in the State Banking Act are set out in sub-paragraph (d) below.

(c) When the Commissioner exercises his seizure and liquidating powers over a **state bank**, he is empowered to exercise most such powers on his own statutory authority and at his own peril, without any pre-condition of obtaining judicial approval, including the power to possess the **state bank** by making findings and posting his notice (of which a copy must be filed with the Clerk and Master in that county), by T.C.A. § 45-2-1502(a) and (b)(1), to exercise all of the **state bank's** powers and functions including hiring and paying the necessary personnel and installing and delegating his powers to a receiver, by T.C.A. § 45-2-1502(b)(2), to promptly transfer its fiduciary positions ( in the event of liquidation, *if the state bank* has fiduciary powers) to a qualified successor by T.C.A. § 45-2-1504(c), to make initial decisions as to validity of claims owed by the **state bank** to creditors, depositors, and other claimants by T.C.A. § 45-2-1504(l), to make disbursements upon approved claims by T.C.A. § 45-2-1504(g) in accordance with priorities established by T.C.A. § 45-2-1504(h), and to pay remaining moneys in accordance with the anti-escheat statutes under T.C.A. § 45-2-1504(j) after distributing to all of the **state bank's** stockholders the amounts of their respective interests under T.C.A. § 45-2-1504(i). No statute requires the approval of any court for any of these actions.

(d) The Commissioner is required to file a copy of his seizure order with the clerk and master, as stated above, and later file an inventory of all the **state bank's** assets with that court as required by T.C.A. § 45-2-1502(a)(2), and thereafter, the court served by that clerk is authorized to give certain narrowly-stated approvals or modifications. These powers specifically within this court's jurisdiction in such cases are:

- (i) The power to give *ex parte* approval for the Commissioner to borrow money from the F.D.I.C. for a stated purpose, by T.C.A. § 45-2-1502(c)(2);
- (ii) The power to give or withhold approval of the Commissioner's decisions to sell part of the bank's property worth over \$500.00, to

compromise any claim against the bank for more than \$500.00, and to make advance payment of any particular claim against the bank, under T.C.A. § 45-2-1504(a)(1)-(3);

(iii) The power to grant the Commissioner an extension beyond the 6-month statutory period allowed for him to rule upon the validity of claims by T.C.A. § 45-2-1504(f),

(iv) After the Commissioner has filed with the Court a schedule of his rulings upon claims filed against the bank, the power to fix the time for hearings, hold such hearings, and rule upon any exceptions filed to the denial of claims, by T.C.A. § 45-2-1504(g), and

(v) To rule upon the final accounting submitted by the Commissioner with the Court as authorized by T.C.A. § 45-2-1504(k).

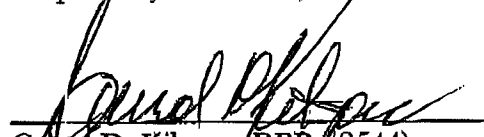
(e) Under the authorities cited in sub-paragraph (a) of this paragraph, the Court's jurisdiction is limited to those narrow and specific orders the statute authorizes the Court to enter, designed to give the Commissioner freedom in dealing with banks without the restraining effects of judicial oversight, and does not include any of the powers the Commissioner here asks the Court to exercise, such as paying his appointees and those of his receiver by delegation pursuant to statute, and does not include such matters as exercising his discretion in making payments other than those so provided, and the Commissioner, in giving his instructions to his appointed receiver, has no lawful authority to expand any court's jurisdiction, which is an inherently legislative power whose exercise by any member of the executive department of government is constitutionally forbidden, Constitution of Tennessee, Art. II, § 2.

(f) The exercise of the powers actually exercised by the Commissioner without lawful authority constitutes an unlawful taking of rights of Sentinel Trust Company, its owners and its directors other than by the law of the land, and without due process of Tennessee law, in violation of the Constitution of Tennessee, Art. I, § 8 and Art. XI, § 16, and the Constitution of the United States, Fifth Amendment and Fourteenth Amendment, § 1.

4<sup>th</sup>: Objecting parties object to the request for payment of fees and expenses of the Receiver and its attorneys and agents because the source of funds sought to pay these invoices are funds held in trust for bond holders. Payment of invoices for any of the services listed in the request for payment must legally come from funds of Sentinel Trust Company, itself, not trust funds, or the Department of Financial Institutions, a fee-supported department of the state of Tennessee.

5<sup>th</sup>: Objecting parties specifically object to the request to approve invoices for Wyatt, Tarrant & Combs for December 1, 2004, through December 31, 2004, in the amount of \$27,626.30; invoices for Waller, Lansden, Dortch & Davis for November 1, 2004, through November 30, 2004, in the amount of \$14,111.77; and invoices for James A. Skinner for December 1, 2004, through December 31, 2004, in the amount of \$1,260.00. Invoices for Wyatt, Tarrant & Combs for December 1, 2004, through the end of the month totaling \$27,626.30, billed at the rate of \$175.00 per hour, yield an improbable 158 hours billed when the business of Sentinel Trust Company had already been given away, to say nothing of the typical abbreviated work period for December because of holidays. Objecting parties specifically object to any invoices being paid to Waller, Lansden, Dortch & Davis and to James A. Skinner on the grounds that both the firm and the individual previously represented Sentinel Trust Company and their actions in now representing the Receiver pose a conflict of interest.

Respectfully submitted,



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It is hereby certified that a copy of the foregoing brief has mailed this March 14th, 2005, postage prepaid, to the following:

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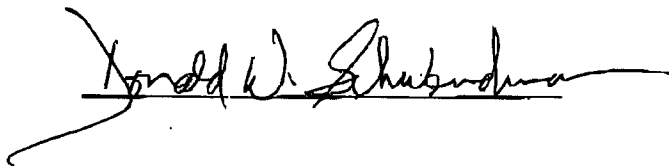
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A handwritten signature in black ink, appearing to read "Donald W. Schubert", is written over a horizontal line.



*Typed to Janet K. &  
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